

October 27, 2015

Dear Legislator,

My staff and I have spoken with many of your colleagues over the past several months about HB 1577, “An act relative to gender identity and nondiscrimination.” Several of you have shared with us that you are struggling with how to balance protecting the privacy of women and children in bathrooms, locker rooms and changing facilities while at the same time responding to the heartfelt pleas of some in the transgender community to grant them certain legal protections. One of the most persistent arguments in favor of HB 1577 has been that it is necessary in order to protect those struggling with gender identity issues from discrimination in places of public accommodation, specifically hospitals.

“A bill before the Legislature would amend the law to protect transgender and gender nonconforming people from discrimination in public spaces, such as hospitals, coffee shops, and retail stores.”ⁱ

Obviously, no one wants people to be refused proper medical treatment from hospitals in Massachusetts. So, it is important to take a look at what this argument actually entails. Fortunately, we have already in our Commonwealth, a very well-documented case adjudicated by the Massachusetts Commission Against Discrimination (MCAD).

As a January, 2014 New York Times article reported:

Andy Inkster, a transgender man, had always wanted biological children. So when he embarked on the transition from female to male at age 18 — changing his name, **taking testosterone and eventually undergoing surgery to remove his breasts** — he left his female reproductive organs intact.

In his mid-20s, he decided it was time. He stopped taking testosterone and started trying to get pregnant. Eventually, in 2009, after beginning graduate school at the University of Massachusetts at Amherst, he sought fertility treatment at Baystate Reproductive Medicine. Baystate was one of the few clinics in the country with an anti-discrimination policy for gender identity. And yet, it refused to treat him, arguing that it **didn’t have enough expertise** to treat transgender patients.ⁱⁱ

After finding another hospital that would artificially inseminate him, Inkster gave birth to a baby girl. However, he believed that Baystate’s conduct had subjected him to unlawful discrimination. He therefore brought a claim before MCADⁱⁱⁱ, which found probable cause to believe that he was **discriminated against solely on the basis of gender**. As a result, Baystate resolved the claim with a monetary settlement.

In light of this case, I would like to bring the following observations to your attention, as you consider the fate of HB 1577:

1. MCAD is already able to successfully address claims of discrimination against transgendered individuals in public accommodations, including hospitals.

2. Baystate was found by MCAD to have “discriminated” because it did not believe it had the expertise necessary to artificially inseminate a transgendered man who:

- a. is biological female;
- b. had both breasts removed in an elective procedure known as “top surgery;”
- c. had already undergone years of hormone treatments through testosterone injections.

In light of these observations, I would respectfully ask that you **consider these questions**:

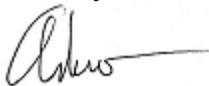
1. Exactly what type of “discrimination” in public accommodations, such as hospitals, is not already covered by MA law and MCAD policy?

2. If Baystate Reproductive Medicine can now be forced, against its own medical judgment, to engage in artificial insemination of a woman who has attempted to transform her body to that of a man through hormone injections and surgery, what acts of “discrimination” could still possibly be beyond the purview of MCAD?

3. If HB 1577 is passed, what further “legal protections” will be added to MA law that will restrict the rights of other MA citizens and expose public accommodations to costly and bewildering discrimination claims, as was the case with Baystate?

The example of Andy Inkster and Baystate serves to demonstrate that the law as it stands already provides for protection against discrimination involving transgenderism and gender identity in public accommodations. Not only is this bill unnecessary for addressing gender identity discrimination claims, HB1577 will actually penalize hospitals, restaurants, fitness centers, shelters, and other facilities providing accommodation to the public with a vague legal standard that creates serious privacy concerns. Please feel free to contact me at any time with questions, comments or concerns.

Sincerely,



Andrew Beckwith

ⁱ <http://www.freedommassachusetts.org/transgender-equality-still-an-issue-in-mass-the-us/>

ⁱⁱ <http://www.nytimes.com/2014/01/13/opinion/the-next-frontier-in-fertility-treatment.html> (Emphasis added)

ⁱⁱⁱ http://www.mafamily.org/wp-content/uploads/2015/10/MCAD-Public-Accommodations-claim-for-Transgender_Redacted1.pdf